

Staff Summary Report



Council Meeting Date: 07/10/2003

Agenda Item Number: 31

SUBJECT: Request to authorize the Mayor to enter into a Memorandum of Understanding (MOU) between the City of Tempe and Arizona Diamondback Charities for the purpose of constructing and maintaining a dedicated Little League ballfield at Clark Park, 620 W. 19th Street.

DOCUMENT NAME: 20030710csmr02 **CLARK PARK IMP (DIAMONDBACKS) (0706-06)**

SUPPORTING DOCS: Yes

COMMENTS: Each year, Arizona Diamondback Charities selects three locations to construct "Field of Dreams" projects to bring the sport of baseball to areas of the community that are either under or not served. The City of Tempe was approached this past spring and asked to participate in this year's program. Diamondback Charities identified several criteria to be considered in determining an appropriate location and after thorough analysis selected Clark Park. The entire cost for the project is to be paid for by Diamondback Charities and upon entering into the agreement, the City of Tempe will commit itself to the long-term maintenance and operation of the field.

PREPARED BY: Mark Richwine, Parks and Recreation Director (350-5325)

REVIEWED BY: Tom Canasi, Community Services Manager (350-5305)

LEGAL REVIEW BY: Ron Dunham, Assistant City Attorney, (350-8814)

FISCAL NOTE: This agreement provides for design and construction services to be paid for by Arizona Diamondback Charities, (approximate value of \$200,000+), in exchange for appropriate naming rights and sponsor recognition. In exchange, the City of Tempe will commit to the annual maintenance, repair and operation of the ballfield for the benefit of Tempe residents and children. Since this grant award calls for the complete renovation of an existing ball field maintained by the City, there should be little or no added fiscal impact.

RECOMMENDATION: Staff recommends approval of this MOU.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding pertains to the Youth Baseball Field at Clark Park (the "Project") to be located at 620 W. 19th Street, Tempe, Arizona. On the Project, Summit Builders, Inc. is general contractor ("Contractor"); Nelsen Architects, Inc. is the Project design architect ("Architect"); Arizona Diamondbacks Charities ("Diamondbacks Charities") is a charitable organization facilitating donation of construction funds for the Project and arranging project construction; and the City of Tempe Parks and Recreation Department ("City") is Owner and will be the donee of the Project upon completion. This Memorandum of Understanding sets forth the Project relationships and dealings between the above parties.

1. SCOPE OF THE PROJECT

The intent of the parties regarding the Project is to design and construct a Youth Baseball field at Clark Park by utilizing charitable donations. Diamondbacks Charities has agreed to provide construction funds to Summit Builders for purposes of building the Project. Architect has agreed to donate time for the sole purpose of Project design. Summit Builders has agreed to donate profit and overhead for purposes of building the Project as general contractor. After the Project is "substantially complete," the Project will be donated to the City as the Project owner. Diamondbacks Charities' role on the Project is limited strictly to facilitating donation of project monies and arranging for a general contractor and architect. It is understood that Contractor and Architect will execute contracts with the City (as Owner) respectively as long as such agreements contain language accurately reflecting the relationships between the parties thereto regarding the scope of services as well as various obligations among the parties in areas such as insurance, indemnity, supervision and control subject to the terms of this Memorandum. Diamondbacks Charities' sole role on the Project is providing charitable construction funds to Contractor and arranging Project construction.

2. PROJECT ROLE OF CONTRACTOR AND ARCHITECT

Summit as Contractor and Nelsen as Architect are independent contractors who will comply with all applicable laws, statutes, ordinances, rules and/or regulations governing their work. Contractor shall be solely responsible for all means and methods of project work, construction and any and all similar tasks on the Project. Architect shall be responsible solely for Project design subject to the terms, provisions and conditions precedent in this Memorandum particularly including ¶¶ 1, 2, 3 and 6 herein. Contractor will execute a separate agreement governing Project construction and supervision, and Architect will execute a separate agreement regarding Project design only. Architect has no role in construction. Architect's scope of services and work will conclude after Architect performs and completes its design tasks. Diamondbacks Charities has no role in design or construction of the Project. Contractor and Architect shall retain all rights and responsibilities, as defined within their respective contracts with the City, until final completion of the project.

3. CITY INDEMNITY OBLIGATIONS

To the fullest extent permitted by law, the City shall indemnify and hold Diamondbacks Charities, Architect and Contractor and any and all of their affiliates, subsidiaries, employees, representatives, sponsors, donors, charities, and/or any other similar entities and/or persons, harmless from any and all claims, damages, causes of action, losses, expenses, demands, judgments or liabilities, including costs of defense and attorney's fees, arising directly or indirectly from any alleged safety violations or failure to comply with applicable safety laws, rules, regulations and/or ordinances regarding maintenance of the Project and/or the City's role as Project Owner. To the fullest extent permitted by law, the City shall indemnify and hold harmless Diamondbacks Charities, Architect, Contractor and any and all of their affiliates, subsidiaries, employees, representatives, sponsors, donors, charities, and/or any other similar entities and/or persons, from any and all claims, damages, causes of action, losses, expenses, demands, judgments or liabilities, including costs of defense and attorney's fees, directly or indirectly related to (1) the Project not related to design and/or construction activities, (2) the City's role as Project Owner, (3) use of the Project and/or 4) uninsured losses related to the City's role as Project owner. These indemnification obligations shall apply to the extent that the claim, damage, cause of action, loss, demand, judgment and/or liability is caused in whole or in part by any negligent or improper act or omission of the City or any of the City's agents, employees, subcontractors, suppliers and/or materialmen.

4. PAYMENT

Diamondbacks Charities, Contractor and Architect have agreed to provide charitable monies and donations to complete Project construction. Architect has agreed to donate design services only. The City is not contributing any monies to Project construction but will be donee of the field when the Project reaches substantial completion. The City is not responsible for any construction and/or design costs. However, the City will from time to time donate its excess inventory of baseball goods to Diamondbacks Charities. When the Project is substantially complete and accepted, the City, as Owner, will assume ownership, maintenance, control and supervision of the Project and be responsible for maintaining and providing appropriate liability insurance.

5. NAMING OF PROJECT

Diamondbacks Charities shall have the exclusive right to name the Project field, including recognition of all parties donating money, labor and/or materials to the Project, and install appropriate dedication/naming signs. Any such signs shall reasonably conform to applicable regulations, ordinances or laws. In the event that the City or Diamondbacks Charities determines that the name of the Project field is not in the best interest of the City, Diamondbacks Charities and/or any and all of its affiliates, subsidiaries, employees, representatives, sponsors, donors, charities and/or other similar entities or persons, either party may request a name change. Such request shall be made and kept privileged and confidential to the extent permitted by Arizona law. A name change may be implemented only upon express mutual consent of both the City and Diamondbacks Charities.

6. USE, OPERATION AND MAINTENANCE OF THE PROJECT FIELD

The City shall take appropriate measures to ensure that the Project field is appropriately, adequately and permanently maintained for the benefit of persons served by the City through the useful life of the Project. The City covenants and acknowledges that the primary purpose of the Project is youth baseball and warrants that it shall take appropriate measures to supervise, protect and maintain the Project for such purpose.

Specifically, the City expressly covenants and agrees to repair, maintain and operate the Project Facilities in strict conformance with the maintenance guidelines attached as Exhibit A, subject to fiscal and legal authority of the City's governing board. Diamondbacks Charities shall have reasonable access to the Project Facilities for purpose of determining the City's compliance with its repair and maintenance obligations. If requested by Diamondbacks Charities, the City shall take such steps as reasonably necessary to ensure the Project Facilities are maintained adequately. This provision does not alter the City's independent obligations to maintain, repair and operate the Project Facility and keep it in a habitable, safe and substantially good condition.

7. CONSTRUCTION ACTIVITIES

Upon execution and approval of this Memorandum, Contractor will make necessary arrangements to begin scheduling Project Construction. Only after all requirements, conditions precedent and obligations under this Memorandum are met, will Architect commence design activities. The City shall obtain all required zoning and use permits and approvals needed for the Project Facilities, including lighting, if required by Arizona law.

Contractor shall provide the City with a construction schedule and estimated completion date, and the City, Architect and Contractor shall execute the Architect and Contractor agreements for this Project as soon as practicable after execution of this Memorandum. The City will have reasonable access to the Project during design and construction for inspection and other purposes. Contractor agrees to warrant Project construction for a period of one year after substantial completion and acceptance by the City.

8. MISCELLANEOUS

This Memorandum is subject to the provisions of Ariz. Rev. Stat. § 38-511.

ARIZONA DIAMONDBACKS
CHARITIES

SUMMIT BUILDERS, INC.

By _____
Title _____
Date _____

By _____
Title _____
Date _____

CITY OF TEMPE

NELSEN ARCHITECTS, INC.

By _____
Title Mayor
Date _____

By _____
Title _____
Date _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

7690-0117/859957

Maintenance Guidelines

Arizona Diamondbacks Charities is proud to provide this field for youth baseball. To ensure that the facility is continually and permanently maintained through the useful life of the Project in a first class condition, Arizona Diamondbacks Charities has outlined these maintenance guidelines for owners/users of this facility. As reflected on the guidelines, the “City” agrees to the following maintenance obligations subject to fiscal and legal authority of its governing board.

Field:

The “City” will mow and keep grass trimmed at fence lines, and other boundaries on a regular basis.

The “City” will provide herbicide control for weeds, according to normal park maintenance standards.

The “City” will water grass at regular intervals, outside of dormant period, to maintain healthy and green grass.

The “City” will treat grass with such additives as gypsum, fertilizer, and aerate as needed.

The “City” will replace or repair malfunctioned or dangerous irrigation equipment.

The “City” will control and remove overgrowth of grass on infield dirt, home plate area, pitchers mound and warning track prior to start of baseball season.

The “City” will roll, rake, drag and tamp infield, mound and home plate area during season, to prevent erosion and promote safety and playability

The “City” will inspect and repair or replace home plates, pitching rubbers, bases and base anchor supports as needed, on an on-going basis, particularly before baseball season.

The “City” will maintain foul pole with respect to painting and repairing fair screen, as needed.

Scoreboard:

The “City” will provide electricity for purposes of scoreboard operation and other electrical needs, installed by contractor

The “City” will clean or repaint any graffiti or other surface damage caused by vandalism.

The “City” will check scoreboard prior to each baseball season for proper operation. Burned out scoreboard bulbs should be replaced prior to each season, including digits, indicators and backlit bulbs. Scoreboard manufacturer will provide some additional bulbs upon completion of project.

The “City” will be responsible for any structural or mechanical damage to scoreboard not incurred by the “City” or not covered by “City” insurance and must be repaired or replaced within 30-days of reported damage, or before baseball season. If scoreboard becomes a cost burden to the “City”, the Diamondbacks Charities will be contacted to request removal of scoreboard and alternatives.

The “City” will report any malfunction of the scoreboard immediately to manufacturer/dealer. If under warranty, the “City” will be responsible for contacting manufacturer/dealer.

The “City” will inspect and repair or replace immediately any locks, boxes or other items to protect scoreboard controls.

Fencing/Backstop:

The “City” will inspect and repair all fencing and backstop, as needed. Foul poles are to remain intact and straight.

The “City” must install, clean, repair or replace plastic guard rail and shade screens and tarps in case of any damage. In the event the replacement becomes a cost burden to the “City”, the removal of these items can be requested for approval to the Diamondbacks Charities.

Flagpoles:

The “City” will maintain flagpoles in good working order and upright, but not responsible for flag maintenance, repair, raising or lowering.

Bleachers:

The “City” will inspect and repair bleachers, checking for loose benches, loose or exposed bolts or other potentially hazardous conditions. Bleachers and area under bleachers are to be cleaned at regular intervals.

Dugouts:

The “City” will maintain benches in a safe condition on an on-going basis. Based on the “City’s” experience, if material, design of benches is subject to excessive damage or removal, the “City” and Charities may agree to replace with more permanent material.

The “City” will maintain dugout roof and dugout area in a safe and clean condition.

Stadium chairs:

The “City” will be responsible for repair and maintenance of chairs, and must be clean and in safe working condition prior and during use period. Because of the unique nature and exposure of chairs, if damage is reoccurring, the “City” may replace or remove at Charities expense.

Scorer’s Table:

The “City” will maintain scorer’s table in a safe condition with contractor providing limited access features during non-use periods.

The “City” will inspect and repair scorer’s table and its accompanying elements, such as rails, posts, ladders, etc. prior to each baseball season, and will clean regularly and paint when needed.

Shade tarps:

The “City” will clean and maintain shade tarps, pads and screens on fencing. Tears and holes (other than wind holes) are to be repaired immediately. The “City” may remove shade tarps, pads, and screens on fencing if they become cost prohibitive.

Lights:

Light controls are to be locked and secured at all times. The “City” will routinely inspect, clean, re-lamp and re-aim sports lighting as necessary.